Supreme Court, U.S.
FILED
JAN 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1360

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, *et al.*,
Petitioners,

v.

SALLY HECHLER,
Respondent.

On A Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

REPLY BRIEF FOR PETITIONERS

LAURENCE J. COHEN
(Counsel of Record)
ELIHU I. LEIFER
RICHARD M. RESNICK
1125 15th Street, N.W.
Washington, D.C. 20005
(202) 785-9300
ALLAN M. ELSTER
17971 Biscayne Boulevard
N. Miami Beach, Florida 33110

Of Counsel:
LAURENCE GOLD
DAVID SILBERMAN
815 16th Street, N.W.
Washington, D.C. 20006

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

Page

I. INSOFAR AS PLAINTIFF'S COMPLAINT ALLEGES THAT THAT STATE LAW IMPOSES DUTIES ON LABOR UNIONS ACTING AS EXCLUSIVE BARGAINING REPRESENTATIVES AND CREATES A CAUSE OF ACTION FOR NEGLEGENT PERFORMANCE OF THOSE DUTIES THE COMPLAINT IS PREEMPTED BY THE FEDERAL DUTY OF FAIR REPRESENTATION.. 2

II. INSOFAR AS PLAINTIFF'S COMPLAINT ALLEGES THAT THE UNION NEGLIGENTLY PERFORMED REPRESENTATIONAL DUTIES ESTABLISHED BY THE COLLECTIVE BARGAINING AGREEMENT, PLAINTIFF'S COMPLAINT IS PREEMPTED BY § 301 OF THE LABOR MANAGEMENT RELATIONS ACT 11

CONCLUSION 18

TABLE OF AUTHORITIES

Cases:	Page
Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)	*passim*
Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966)	15, 16-17
Barrentive v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)	7
Bowen v. United States Parcel Service, 459 U.S. 212 (1983)	15
Complete Auto Transit v. Reis, 451 U.S. 401 (1981)	15
Clayton v. Autoworkers, 451 U.S. 679 (1981)	15
DelCostello v. Teamsters, 462 U.S. 151 (1983)	6, 15, 16-18
Electrical Workers v. Foust, 442 U.S. 42 (1979)	7
Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)	7
Franchise Tax Board v. Laborers Vacation Trust, 463 U.S. 1 (1983)	11
Golden State Transit Corp. v. Los Angeles, —— U.S. ——, 54 L.W. 4329 (April 1, 1986)	8
Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976)	10
H.K. Poter Co. v. NLRB, 397 U.S. 99 (1970)	8
Marshall v. Longshoremen's Local, 57 Cal. 2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962)	7
Metropolitan Life Insurance Co. v. Massachusetts, —— U.S. ——, 53 L.W. 4616 (June 3, 1985)	8, 9
Mitchell v. United Parcel Service, 451 U.S. 51 (1981)	15
NLRB v. Insurance Agents, 361 U.S. 477 (1960)	8
Plumbers & Pipefitters v. Plumbers & Pipefitters, 452 U.S. 615 (1981)	10
Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965)	15
Siler v. Louisville & N.R. Co., 213 U.S. 175 (1909)	11
Teamsters Local v. Lucas Flour Co., 369 U.S. 95 (1962)	14-15
Teamsters Union v. Oliver, 358 U.S. 293 (1959)	6

TABLE OF AUTHORITIES—Continued

Page

Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957) 15
Vaca v. Sipes, 386 U.S. 171 (1967) 7, 9

Statutes. Page

Labor Management Relations Act of 1947, § 301, 29 U.S.C. § 185 ..... *passim*
National Labor Relations Act, as amended
9(a), 29 U.S.C. § 159(a) 6
§ 10(b), 29 U.S.C. § 160(b) 17-18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 85-1360

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, *et al.*,

Petitioners,

v.

SALLY HECHLER,

Respondent.

On A Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

REPLY BRIEF FOR PETITIONERS

Plaintiff-respondent Sally Hechler ("plaintiff") advances two principal arguments in her effort to avoid the force of this Court's decision in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) ("*Lueck*").

First, plaintiff attempts to take her case outside the holding of *Lueck* by remaking her lawsuit into one which is *not* based on the collective bargaining agreement between Florida Power and Light Company ("the Company") and the International Brotherhood of Electrical Workers and its Local 759 ("the Union"). Alternatively plaintiff attempts to remake the holding of *Lueck* into one that does *not* preempt all state-law causes of action which are dependent upon the provisions of a collective bargaining agreement but only such causes of action that threaten the grievance-arbitration system.

We treat with plaintiff's two arguments *seriatim*.[1]

I. INSOFAR AS PLAINTIFF'S COMPLAINT ALLEGES THAT STATE LAW IMPOSES DUTIES ON LABOR UNIONS ACTING AS EXCLUSIVE BARGAINING REPRESENTATIVES AND CREATES A CAUSE OF ACTION FOR NEGLIGENT PERFORMANCE OF THOSE DUTIES, THE COMPLAINT IS PREEMPTED BY THE FEDERAL DUTY OF FAIR REPRESENTATION

Proceeding as if this were not a real case involving an actual complaint, plaintiff conjures up a series of hypotheticals in which a union arguably "would be responsible for its representatives' negligent performance or non-performance of 'an independent, non-negotiable state imposed duty . . .'" Resp. Br. at 19; *see id.* at 16-18. Based on these hypotheticals, plaintiff contends that "the Union's duty to Sally Hechler may exist independently of its collective bargaining agreement with the Company, and may be enforced without reference to that agreement." *Id.* at 3. As we proceed to show, that contention is doubly flawed.

First, the claim that plaintiff attempts to tender to this Court is *not* the one on which plaintiff proceeded in the district court or the court of appeals, or even in opposing the petition for a writ of certiorari in this Court. To the contrary, throughout this litigation plaintiff has steadfastly maintained that her complaint *is* grounded

---

[1] Before turning to the true disagreements between the parties we note at the outset that Plaintiff attributes to us the assertion that "tort actions and contract actions in Florida are no different," and plaintiff then indignantly attacks us for a "sweeping misstatement of Florida law." Resp. Br. at 12, 14. But we never made the claim plaintiff attributes to us; all that we argued in our opening brief with respect to Florida law was that negligence in performing a contractual duty gives rise to a state contract action and a state tort action. *See* Pet. Br. at 15-16. Despite her invective, we do not understand respondent to take issue with that proposition.

in the collective bargaining agreement between the Company and the Union.

Second, the only other source of duty even mentioned in the complaint, and never again, is a duty supposedly imposed by state law on labor unions with respect to the manner in which unions represent their members in collective bargaining. Insofar as plaintiff's complaint rests on this theory, the complaint is preempted by the federal duty of fair representation and must be dismissed for that reason or because, treated as a fair-representation claim, the complaint is time-barred.

A. We begin with the text of plaintiff's complaint in this case. That complaint alleges that the Union "owed the Plaintiff the duty to assure that the Plaintiff was provided safety in her work place and a safe work place," and that the Union "breached th[is] duty and w[as] consequently negligent to your Plaintiff, SALLY HECHLER, by allowing her to be assigned to work in and allowing her to actually work in . . . a dangerous location and environment . . ." J.A. 4-5. The complaint alleges two sources for the Union's duty:

> *contracts* and agreements entered into by and between these said Defendants and the said Florida Power, to which contracts and agreements the Plaintiff was a third-party beneficiary, and . . . *the relationship* by and between the said Defendants, and the Plaintiff whereby the Plaintiff SALLY HECHLER, was a dues paying member of the said Defendants. [J. A. at 4; emphasis added]

Thus, according to her complaint, the duty "to assure . . . a safe work place"—which duty forms the gravaman of plaintiff's suit—is grounded either (a) in the collective bargaining agreement, or (b) in some body of Florida law which regulates the "relationship" between a union and the dues-paying members the union represents in collective bargaining.

In the lower courts, plaintiff abandoned the second theory and based her case *solely* on the collective bar-

gaining agreement. Thus, in opposing the Union's motion to dismiss in the district court, plaintiff stated, "The nature and scope of the duty of care owed Plaintiff is determined *by reference to the collective bargaining agreement.*" R. 98 (emphasis added). The district court, in granting the motion to dismiss, relied on plaintiff's formulation of her claim, concluding that because "the duty allegedly owed to plaintiff *flows from the collective bargaining agreement,*" it follows that "federal law controls here." Pet. App. 3a-4a (emphasis added).

In seeking reversal of the district court's ruling in the court of appeals, plaintiff continued to characterize her suit as one grounded in the labor contract. Thus, in the opening paragraph of her appellate court brief, plaintiff described her claim as follows:

> In a complaint filed in Florida state court, appellant Sally Hechler . . . brought an action in negligence against her union . . . *The complaint charged that Hechler was a third party beneficiary of agreements entered into between FP&L and both the International and Local 759* (hereinafter referred to collectively as the "Union") under which they owed Hechler "the duty to assure that the Plaintiff was provided safety in her work place and a safe work place . . . [Br. for Appellant in C.A. No. 84-5799, at 1; emphasis added.]

And in the argument portion of her brief, plaintiff acknowledged that her "complaint did allege that the Union's duty—the breach of which was common-law negligence—*was created by the collective bargaining agreement,*" but plaintiff argued that this allegation "hardly converted her complaint from a state law claim to a federal law claim." *Id.* at 45 n. 47 (emphasis added). The court of appeals agreed with plaintiff, reasoning that "[t]hough the contract may be of use in defining the scope of the duty owed," Pet. App. 21a, the state law claim nonetheless is not preempted by federal law.

Given the theory on which this case was litigated in, and decided by, both the district court and the court of appeals, it is hardly surprising that, in opposing the Union's certiorari petition in this Court, plaintiff described her complaint quite simply as a claim that "the Unions were negligent in *the performance of a contractual obligation*," Br. in Opp. at 4 (emphasis added), and plaintiff defended that claim as follows:

> *Although the contract in question admittedly defines the nature and scope of the Union's duties*, it does not, and cannot, abrogate the Union's independent state law obligation to perform those duties in a reasonable way. The contract can *define* what is reasonable, but it cannot *absolve* what it defines as unreasonable. [*Id.* at 8-9; first emphasis added.]

What *is* surprising, in light of all of the foregoing, is that plaintiff would now assert for the first time in this litigation that "the Union's duty to Sally Hechler may exist independently of its collective bargaining agreement with the Company," Resp. Br. at 3, and that "Sally Hechler's complaint raises claims which may be litigated free of any need to interpret the collective bargaining agreement," *id.* at 22.

It is, we submit, too late in the day for plaintiff to remake her lawsuit to fit a new-found legal theory. The Court, we presume, based on the decisions below and the certiorari papers, granted a writ to decide whether the states are free to regulate the manner in which a party to a collective bargaining agreement performs a duty assumed in that agreement. That is the question that should be decided.

B. Even if plaintiff were not bound by her prior statements of her claim as one for "negligen[ce] in the performance of a contractual obligation," plaintiff still would not have succeeded in stating a viable legal theory. For, as we have seen, the only other source of duty alleged in plaintiff's complaint is a supposed body of Florida law

regulating the "relationship" between a union and the dues paying members the union represents in collective bargaining and requiring unions to secure for those members, *vis-a-vis* their employer, certain safety-related employment rights.[2] And as we proceed to show, insofar as plaintiff's complaint is based on that theory, the complaint is preempted by the federal duty of fair representation.

1. As we observed in our opening brief, the duty of fair representation has been "implied under the scheme of the National Labor Relations Act," *DelCostello v. Teamsters*, 462 U.S. 151, 164 (1983), in order to place certain limits on the power that § 9(a) of that Act, 29 U.S.C. § 159(a), confers on unions acting as exclusive representative in the system of collective bargaining established by the Act. The parameters of the fair representation duty have been carefully delineated to further the "federal labor policy" whose "goal . . . is to encourage the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations, and thereby to minimize industrial strife." *Teamsters Union v. Oliver*, 358 U.S. 283, 295 (1959).

---

[2] The other hypotheticals about which plaintiff muses in her brief, *see* Resp. Br. at 18-19, are just that: hypotheticals. Thus, while *a* complaint "might be based upon obligations voluntarily assumed" by a union outside of the labor agreement, the *complaint in this case* is not so based; it contains no such allegation and does not remotely suggest that the Union "provide[d] . . . on-the-job-training to apprentices," "performed the function of screening job assignments for the Company" or otherwise engaged in activities that are not an integral part of its duties as an exclusive representative and that constitute a "customary practice [which] give[s] rise to a duty of care." Resp. Br. at 18. Similarly, whatever would be the fate of a complaint which alleged that "[u]nion representatives committed some positive act of negligence in connection with [a] job assignment, like recommending [the plaintiff] for the job, or negligently misrepresenting her abilities," Resp. Br. at 19, the *complaint in this case* does not allege such a basis of liability.

Given that goal, "union discretion is essential to the proper function of the collective bargaining system," *Electrical Workers v. Foust*, 442 U.S. 42, 51 (1979), as unions must be free to "balanc[e] individual and collective interests" so as to achieve "increased benefits for workers in the bargaining unit as a whole," *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 742 (1981). The duty of fair representation recognizes that cardinal principle of the collective bargaining system by "allow[ing]" a "wide range of reasonableness [to] a statutory bargaining representative in serving the unit it represents," mindful that the "complete satisfaction of all who are represented is hardly to be expected." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). Thus, a "breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

To allow state law to add to the fair-representation duty by regulating the "relationship" between a union and those the union represents in a way that imposes state-created duties on unions with respect to the union's responsibilities *as bargaining representative* would flout the premises on which the duty of fair representation rests.[3] For if Florida were free, as plaintiff here contends, to impose on unions the duty to secure for their members "a safe work place" (p. 3 *supra*), and to hold

---

[3] We underscore the phrase "as bargaining representative" in text to emphasize the fact that unions act in a variety of *other* capacities as well, and that state regulation of union action in these other spheres would raise very different considerations. A union, for example, may be a property holder, and states are surely free to require unions to exercise due care towards invitees, including member-invitees. Cf. *Marshall v. Longshoremen's Local*, 57 Cal. 2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962). Our point in text is simply that when a state attempts to impose duties on a union *qua* bargaining representative, the state runs afoul of the national labor policy.

a union liable for breaching that duty even though the union has not acted in an arbitrary or discriminatory manner, unions would be stripped of the discretion in bargaining and in resolving grievances that the federal law provides and protects. Simply put, a state-imposed duty to assure a safe work place would fix the union's priorities in bargaining and in grievance processing *and preclude the union and its members, through its internal majoritarian processes, from establishing its own priorities and agenda.*

Indeed, if Florida were free to impose such a duty on unions, the state (and other states) would likewise be free to impose on unions the duty to secure other desirable rights and protections for those the union represents. The end result would be a system in which the bargaining process would be effectively controlled by state law, rather than by the private decisions of organized groups of workers. And such a result is the very antithesis of the system of *free* collective bargaining the NLRA seeks to foster. As this Court has held, Congress "intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences," *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960); accordingly, "government may not step in and become party to the negotiations," *Golden State Transit Corp. v. Los Angeles*, —— U.S. ——, 54 L.W. 4329, 4322 (April 1, 1986). *See also H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970).

If Florida believes that workers should enjoy the right to a "safe workplace," Florida is free, as it has done, *see* Pet. Br. at 15, to grant that right to employees and to *impose a correlative duty on employers.* Such a state-created right and duty exist "'independent of the collective-bargaining process'" and establish a "state minimum employment standard[]," *Metropolitan Life Insurance Co. v. Massachusetts*, —— U.S. ——, 53 L.W.

4616, 4624 (June 3, 1985), that protects all employees in the state, whether those employees are organized or unorganized. The enforcement of such "independent nonnegotiable state-law rights," *Lueck, supra*, 471 U.S. at 213, in no way conflicts with the national labor policy; to the contrary, "Congress developed the framework for self-organization and collective bargaining of the NLRA within the larger body of state law promoting public safety and health," *Metropolitan Life, supra*, 53 L.W. at 4625. But for the reasons just reviewed, Florida cannot seek to protect workers by commandeering the collective-bargaining process and converting labor unions acting as exclusive bargaining representatives into instruments of the state, obligated by state law to achieve certain contractual protections for unionized employees.

2. It was precisely for these reasons, we submit, that (as we showed in our opening brief at 26-27), the Court in *Vaca v. Sipes, supra*, held that a suit over a union's performance of its representational functions is, perforce, a fair representation suit in which "federal law governs," 366 U.S. at 174, even though, as was true in *Vacca*, the suit may happen to be pleaded as a state law claim. That holding is directly controlling here.

Plaintiff seeks to avoid the force of *Vaca* by arguing that no "federal interest" would "be served by allowing unions to be negligent in the performance of common law duties to workers which exist *independent* of the collective bargaining agreement." Resp. Br. at 37 (emphasis in original). What plaintiff fails to recognize is that, as shown above, there is a profound federal interest —the interest in a system of free collective bargaining— that would be fatally undermined by allowing the states to impose "common law duties" of a representational nature on unions. Indeed, as we have seen, the duty of fair representation only goes so far as to proscribe conduct which is "arbitrary, discriminatory or in bad faith," p. 7, *supra*, precisely because this Court, in

developing that judicially-implied duty, has recognized the importance of leaving unions free to make their own judgments—and even to make "errors in judgment," *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976)—so that the collective bargaining system can function. And given that the limitation on the fair-representation duty constitutes a considered federal judgment concerning the extent to which unions should be liable to those they represent for the unions' actions as bargaining representative it would make no sense to allow the states to ignore that judgment and to impose additional representational duties on the bargaining representative.[4]

---

[4] Of course the national labor policy is not impaired by holding a union to promises that the union chooses to make concerning the manner in which the union will perform its representational role, for such contractual actions do not impose obligations on unions by operation of law, but instead enforce obligations voluntarily assumed by a union.

Indeed, the precise point of § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, is to hold unions to the promises the unions make in collective bargaining according to a uniform federal law, and this Court has left open the question of whether § 301, or state law, is the proper legal predicate for enforcement of union promises made outside of collective bargaining, *see Plumbers & Pipefitters v. Plumbers & Pipefitters*, 452 U.S. 615, 627 n.16 (1981).

Plaintiff's extended discussion of the binding effect of union promises, *see* Resp. Br. at 39-42, is beside the point both because it is a mere reiteration of common ground and because insofar as plaintiff seeks to avoid reliance on the collective bargaining agreement, *see* p. 5, *supra*, she is attempting to use state tort law or the state law of quasi-contracts to impose representational duties on the Union *as a matter of law* in *addition* to the duties the Union has assumed in contract *as a matter of fact*.

II. INSOFAR AS PLAINTIFF'S COMPLAINT ALLEGES THAT THE UNION NEGLIGENTLY PERFORMED REPRESENTATIONAL DUTIES ESTABLISHED BY THE COLLECTIVE BARGAINING AGREEMENT, PLAINTIFF'S COMPLAINT IS PREEMPTED BY § 301 OF THE LABOR MANAGEMENT RELATIONS ACT

Although seeking to divorce her complaint from the collective bargaining agreement between the Company and the Union, plaintiff does at least acknowledge that the collective agreement provides an alternative source for the alleged duty on which her claim is based,[5] and in this regard plaintiff invokes the common-law principle that "the negligent performance of a specific contractual obigation" gives rise to a tort action, Resp. Br. at 13. Plaintiff thus contends that the states are free to create state tort remedies for the negligent performance of duties estabiished by a collective bargaining agreement. As we proceed to show, *Lueck* forecloses that contention.

1. Plaintiff's argument starts from premises with which we do not quarrel. Contrary to the position plaintiff attributes to us, we agree, of course, that the state courts are competent to apply federal law and are to be "trusted to interpret federal law correctly, subject only to the ultimate review of this Court." Resp. Br. at 25. We also recognize that "there is nothing inherently imper-

---

[5] That concession suffices to establish the propriety of removal in this case, since an action is removable if the federal courts would have original jurisdiction over that action, *see* 28 U.S.C. § 1441(b); federal jurisdiction exists where one claim in a complaint arises under federal law, *see Siler v. Louisville & N. R. Co.*, 213 U.S. 175 (1909); and as we explained in our opening brief, federal-question jurisdiction exists where "a necessary element" of a claim is a "substantial . . . question of federal law," *Franchise Tax Board v. Laborers Vacation Trust*, 463 U.S. 1, 13 (1983); *see* Pet. Br. at 6 n.2. Thus, contrary, to plaintiff's suggestion, *see* Resp. Br. at 29-30 n.46, there would be no need to remand this removal issue even if the Court were to "determine that Hechler's state claim is permissible in an appropriate forum."

missible" in state law creating a cause of action which "embraces"—that is, incorporates as an element of the cause—"an important federal question." *Id.* at 36.

As respondent concedes, however, such a state cause of action like one based solely on state law, is pre-empted by the Supremacy Clause where "the very existence of the state action—even if based on federal law—would 'prevent[] the accomplishment of the purposes of the federal act,'" *id.* at 31, or where "the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States," *id.* at 7, *quoting Lueck, supra*, 471 U.S. at 209. It is our submission, for reasons developed at length in our opening brief, that *Lueck* teaches that the existence of a state tort cause of action based on the breach of a collectively-bargained duty would "prevent the accomplishment of the purposes" of § 301 and is therefore preempted by that law.

2. Plaintiff argues that *Lueck* holds only that a state-law claim which is based on a collective-bargaining agreement and which would "shortcut[] grievance and arbitration procedures" and thereby contravene the federal policy of "encouragement of grievance arbitration" is preempted by § 301. Resp. Br. at 31, 10. Based on that reading of *Lueck*, plaintiff goes to great lengths to show that "permitting Hechler's action would not deter the use of the . . . dispute-resolution procedures available under federal law." *Id.* at 32; *see id.* at 32-36. But plaintiff's showing is internally inconsistent, as we explain in the margin,[6] and, moreover, beside the point because plaintiff fundamentally misunderstands *Lueck*.

---

[6] In plaintiff's view, "[i]f, *before* her injury, Sally Hechler . . . had run to state court charging that the Union had acted negligently in allowing her assignment to an unsafe job, she properly would have faced dismissal of her state action as pre-empted by the federal law," but "Hechler did not circumvent federally-sanctioned dispute resolution mechanisms by proceeding to state court after

In *Lueck* the Court stated that "[a] *final* reason for holding that Congress intended § 301 to preempt this kind of derivative tort claim is that only that result preserves the central role or arbitration in our 'system of industrial self-government.'" 471 U.S. at 219 (emphasis added). The Court offered this "final reason" only after setting forth at length the *principal* ground of decision in the case: that "the policies that animate § 301 . . . require that 'the relationships created by [a collective bargaining] agreement' be defined by application of 'an evolving federal common law grounded in national labor policy.'" *Id.* at 210-11. In accord with its entire rationale *Lueck*'s holding is stated in the following terms:

> We . . . hold that when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim or dismissed as preempted by federal labor-contract law. [*Id.* at 220.]

By its plain terms, then, the holding of *Lueck* is *not* limited to cases in which a state tort claim would "deter the use" of grievance-arbitration procedures, as plaintiff contends. Rather, *Lueck* teaches that any state-law claim which is "substantially dependent upon analysis of the terms of" a collective-bargaining agreement—that "purports to define the meaning of the contract relationship," *Lueck*, 471 U.S. at 213—is preempted by § 301.

3. Plaintiff's misreading of *Lueck* reflects a more fundamental misunderstanding of the policies underlying § 301—a misunderstanding that blinds plaintiff to

---

her injury." Resp. Br. at 33, 34-35 (emphasis in original). But the only difference between the hypothesized pre-injury suit and the present suit is the nature of the appropriate remedy, and we know of no principled basis for concluding that the preemptive force of § 301 varies with the remedy being sought. Thus, plaintiff's concession that a pre-injury suit would be preempted compels the same conclusion with respect to the instant case as well.

the fact that (to paraphrase plaintiff) "the very existence" of any state action based on collective-bargained duties necessarily "would prevent the accomplishment of the purposes" of § 301. *See* Resp. Br. at 31. That misunderstanding is most clearly manifest in plaintiff's discussion of *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95 (1962).

Lucas Flour, of course, involved an action which was plead as a state-law breach of contract claim, the contract being a collective bargaining agreement. According to plaintiff,

> [t]he holding of *Lucas Flower* [sic] is *not* that the entire state action was preempted by § 301. The holding is that state law must give way on those *aspects* of the controversy committed by 301 to a uniform interpretation under federal law. . . . By its plain language, *Lucas Flower* [sic] simply required the state court to enforce federal law where appropriate. . . . The lesson of *Lucas Flower* [sic] is that, unless it is somehow *otherwise objectionable* a state action is permissible even if it embraces issues cognizable under 301, so long as the state court applied federal law to those issues. Even the presumptive involvement of federal questions is no warrant for preemption. [Resp. Br. at 9-10; emphasis in original.]

Based on this understanding of *Lucas Flour*—and § 301—plaintiff argues that in the instant case the fact that her claim "embraces an important federal question . . . does not mean that all of the theretofore-state issues —like the amount of damages or the statute of limitations—are suddenly coverted into federal questions, which must find their source in some elusive concept of federal common law." *Id.* at 29-30.

Plaintiff's understanding of *Lucas Flour* could not be more wrong. *Lucas Flour* teaches that "the subject matter of § 301(a) 'is peculiarly one that calls for uniform law,'" and that "in enacting § 301 Congress intended

doctrines of federal law uniformly to prevail over inconsistent local rules." 369 U.S. at 103, 104. Thus, under *Lucas Flour* and its progeny, "a suit in state court alleging a violation of a provision of a labor contract must be brought under § 301 and be resolved by reference to federal law," *Lueck* 471 U.S. at 210; indeed,

> the preemptive force of § 301 is so powerful *as to displace entirely* any state cause of action "for violation of contracts between an employer and a labor organization." Any such suit is *purely a creature of federal law*, notwithstanding the fact that state law would provide a cause of action in the absence of § 301. [*Franchise Tax Bd. v. Laborers Vacation Trust, supra*, 463 U.S. at 23; emphasis added.]

And *all* issues pertaining to the merits of such a contract suit—including issues of limitations[7] or of remediation,[8] no less than issues of contract interpretation—are to be resolved by "federal common law" which " 'the courts must fashion from the policy of our national labor laws.' " *Lueck*, 471 U.S. at 209, *quoting Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957).

It is for precisely this reason that *Lueck* holds that any state cause of action which is "substantially dependent upon analysis of the terms" of a collective bargaining agreement is preempted by § 301. For, as the Court explained in *Lueck*, questions relating to the meaning of, and legal consequences that flow from, a collective bargaining agreement

> must be resolved by reference to uniform federal law whether such questions arise in the context of a suit

---

[7] *See, e.g., Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966); *Mitchell v. United Parcel Service*, 451 U.S. 51 (1981); *DelCostello v. Teamsters*, 462 U.S. 151 (1983).

[8] *See, e.g., Bowen v. United States Parcel Service*, 459 U.S. 212 (1983); *Complete Auto Transit v. Reis*, 451 U.S. 401 (1981); *cf. Clayton v. Autoworkers*, 451 U.S. 679 (1981); *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965).

> for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by re-labeling their contract claims as claims for tortious breach of contract. [471 U.S. at 211.]

III. UNDER EITHER THEORY ALLEGED IN PLAINTIFF'S COMPLAINT, THE DISTRICT COURT PROPERLY HELD THE COMPLAINT TO BE UNTIMELY

The only remaining question is whether the district court's judgment dismissing plaintiff's complaint as untimely should be reinstated or whether, instead, this case should be remanded to the lower courts for application of federal law.

Insofar as plaintiff's claim alleges a breach of representational duties imposed on the union by operation of law, that claim is, as we have shown in Part I *supra*, necessarily a fair-representation claim. As such, this Court's decision in *DelCostello v. Teamsters*, *supra*, is directly controlling, and compels dismissal of the claim as barred by the six-month statutes of limitation *Del Costello* holds applicable to fair-representation claims.

Insofar as plaintiff's complaint concerns the union's performance of duties established by the collective bargaining agreement, the claim is, as shown in Part II, perforce a § 301 claim. Plaintiff seizes upon that fact to argue for the application of a five-year contract limitations period, claiming that *Auto Workers v. Hoosier Cardinal Corp.*, *supra*, supports that result. Plaintiff is mistaken.

Hoosier Cardinal did, of course, apply a state statute of limitations to a § 301 action. But in reaching that result, the Court stressed that

> [t]he present suit is essentially an action for damages caused by an alleged breach of an employer's obliga-

> tion embodied in a collective bargaining agreement. Such an action closely resembles an action for breach of contract cognizable at common law. *Whether other § 301 suits different from the present one might call for the application of other rules on timeliness, we are not required to decide, and we indicate no view whatsoever on that question.* [383 U.S. at 706, n.7; emphasis added]

In *DelCostello*, the Court relied, *see* 462 U.S. at 163, on this passage from *Hoosier Cardinal* to conclude that state law is *not* controlling in a 'hybrid § 301/fair representation claim," 461 U.S. at 165. The Court reasoned, in essence, that because such a suit puts at issue the manner in which a union has performed its function as bargaining representative, the suit bears a "family resemblance" to unfair labor practice claims, and the "considerations relevant to the choice of a limitations period" for such hybrid suits and for unfair labor practice claims are "closely similar". *Id.* at 170-71. Accordingly, the *DelCostello* Court held that hybrid § 301/fair representation suits are governed by the statute of limitations contained in § 10(b) of the NLRA, 29 U.S.C. § 160(b).

The instant case—whether viewed as a "pure" fair-representation case or as a § 301 case—is analytically indistinguishable from the claim in *DelCostello* and has virtually nothing in common with the type of claim that was presented in *Hoosier Cardinal.* As we showed in our opening brief (at 22-23), when all is said and done plaintiff here seeks to imply in law from the safety provision of the collective bargaining agreement certain duties on the Union with respect to the enforcement of those provisions, and plaintiff seeks to hold the Union liable for breaching those implied duties; her claim, then, as she told the district court, is that the Union wrongfully "fail[ed] to enforce provisions contained in the collective bargaining agreement," *see* Pet. Br. at 23. That was precisely the claim in *DelCostello.* And *DelCostello* teaches that the statute of limitations for claims of that type,

however such claims are framed, is § 10(b), under which statute the instant action is untimely.

CONCLUSION

For the foregoing reasons, and those stated in our opening brief, the judgment of the court of appeals should be reversed and the case remanded with instructions to affirm the district court's dismissal.

Respectfully submitted,

LAURENCE J. COHEN
(Counsel of Record)
ELIHU I. LEIFER
RICHARD M. RESNICK
1125 15th Street, N.W.
Washington, D.C. 20005
(202) 785-9300
ALLAN M. ELSTER
17971 Biscayne Boulevard
N. Miami Beach, Florida 33110

Of Counsel:
LAURENCE GOLD
DAVID SILBERMAN
815 16th Street, N.W.
Washington, D.C. 20006